Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of the	)	
Local Competition Provisions	)	CC Docket No. 96-98
Of the Telecommunications Act of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon	)	
For Elimination of Mandatory Unbundling of	)	DA 01-911
High-Capacity Loops and Dedicated Transport	)	

COMMENTS OF TDS METROCOM, INC

TDS METROCOM, Inc. (TDS Metrocom), a facilities-based CLEC serving residential and business customers in small to medium-sized markets in Illinois, Michigan and Wisconsin,[1] submits these comments to oppose the joint petition filed April 5, 2001 by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc. and Verizon Telephone Companies (Petitioners). The petition seeks elimination of the requirement to provide other carriers unbundled high-capacity loops and dedicated transport.[2] The petition should be denied because the information the Petitioners provide does not show that adequate, ubiquitous alternatives for these UNEs exist, particularly since the request ignores both how CLECs' actually use unbundled high capacity loops and dedicated transport and the different market conditions in small and midsize cities and suburban areas. Once the nature of CLECs' continuing reliance on mandatory unbundling is understood, there can be no doubt that eliminating mandatory unbundling will impair CLECs'

[1] TDS Metrocom targets small to medium-sized cities, such as Appleton, Beloit, Depere, Fond Du Lac, Green Bay, Janesville, Middleton, Neenah, Oshkosh, Pewaukee and Stoughton and a number of communities under 10,000 in population

[2] TDS METROCOM is a subsidiary of TDS TELECOM, which also owns 106 incumbent local exchange carriers serving predominantly rural areas in 28 states.

ability to provide service, hinder the growth of competition and discourage infrastructure investment.

I. INTRODUCTION

In the UNE remand order, the Commission applied section 251(d) to require access to unbundling for high-capacity loops and dedicated transport because requesting carriers' ability to provide services would be impaired without such UNEs.[3] It rejected claims that self-provisioning was an available alternative across-the-board because evidence that some CLECs could serve some customers "tells us nothing about the customer the competitor would like to serve but cannot because the cost of building a loop from the customer premises to the competitive LEC's switch is prohibitive."[4] It also rejected claims that sufficient alternatives for dedicated and shared transport were available because

> self-provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier's costs of entering a market or of expanding the scope of its service, delays broad-based entry, and materially limits the scope and quality of a requesting carrier's service offerings.[5]

The Petitioners now offer the same kinds of partial availability information to seek immediate removal of these mandatory unbundling requirements only halfway through the 3-year period the Commission adopted for maintaining the obligations before it promised to reexamine them.[6] Proper analysis of how CLECs use and must continue to use these UNEs, however, in light of the sketchy record that ignores the kinds of places that TDS Metrocom serves, compels the conclusion that denying CLECs access to high-capacity loops and dedicated transport will "impair

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, paras. 184, 321(1999) (UNE Remand Order).
[4] *Id*, para 184.
[5] *Id.* para. 321.
[6] *Id.* para. 15.

the ability of the[se] telecommunications carrier[s] to provide the services that [they] seek[ ] to offer," contrary to section 251(d)(2)(B).

II. WITHOUT CONTINUED ACCESS TO HIGH-CAPACITY LOOPS, THE ABILITY OF CLECS TO PROVIDE SERVICE TO END-USERS WILL BE SIGNIFICANTLY IMPAIRED

A. Ubiquity

Since TDS Metrocom targets second and third tier markets and residential areas generally neglected by other CLECs as insufficiently profitable, it must manage its market growth carefully, deploying switches and using unbundled loops and T-1s, along with limited, business case-justified, fiber over-builds. Under the Commission's existing unbundling rules, TDS Metrocom has been able to build its market presence gradually to 90,000 lines, of which over 35,000 are residential, and to deploy 3,600 DSL lines, of which 2,400 are residential. UNE access spares TDS Metrocom the need to duplicate facilities before it is economically justified or to delay or forego service. TDS Metrocom must also continue to rely on UNE access as it seeks to deploy both voice and advanced services to small/medium-sized business and in smaller markets where alternative facility deployment would be inefficient. Thus, contrary to Petitioners' claims,[7] access to high capacity loops and dedicated transport significantly advances the Congressional objective of promoting efficient facilities-based competition and deployment of advanced services.

Losing the use of high-capacity UNEs would particularly impair service to smaller markets. The evidence does not support the contention that there is a ubiquitous vibrant wholesale market for high-capacity loops and dedicated transport, let alone that such a market exists at all in smaller markets. Some alternatives may be available in the core of major urban markets, but with respect to alternative high capacity loops, even that notion is suspect. Given the absence of such alternatives and the prohibitive cost of duplication in less populous areas, TDS Metrocom's ability to serve and

[7] Petition, p. 23.

grow will be seriously impaired if these UNEs become unavailable. The notion that alternatives are available "wherever there is likely to be significant demand for them"[8] begs the question of adequate availability. It necessarily assumes either (1) that self- or non-ILEC-provided alternatives are currently economically feasible wherever customers want them provided or (2) that UNEs need only be made available where demand will create sufficient revenues to deploy such alternative facilities. Indeed, the argument actually concedes that alternatives are not "ubiquitous" by assuming there is no demand wherever no available alternative has been deployed. Similarly, even if the claim that CLECs have built to 25% of commercial buildings nationwide is factual,[9] the statement itself concedes that the other 75% of the nation's commercial buildings lack CLEC-provided alternatives to high-capacity UNE loops. One could even argue that CLECs may have already built to many of the buildings where it makes economic sense to do so. Eliminating the unbundling requirement would thus seriously impair the ability of competitors to access businesses in 3/4ths of the nation's commercial buildings.

A comparison to special access does not further the Petitioners' claim of sufficient alternatives because CLECs use high-capacity loops for much more than special access and in a much wider geographic area. Carriers use high-capacity loops to provide voice and data services to businesses of all shapes and sizes. Many CLECs including TDS Metrocom use channelized high capacity loops to provide high quality voice service to businesses with as few as 10 lines. Building alternate fiber to provide service to these businesses is far too costly. TDS Metrocom has found that until a business grows to the size of 60-80 lines (depending on location), it does not make economic sense to even consider the possibility of over-building. Thus, high-capacity UNEs represent the only way CLECs can efficiently access and price competitively in the small-business market. In some cases the incumbent carrier does not even have enough copper loops to satisfy a business customer's

[8] Petition, p. 3.

demand, so that a high-capacity loop is the only way to provide adequate capacity. About 25% of Metrocom's access lines are currently provisioned using unbundled high capacity lines. Ending the requirement for access to high-capacity loops would seriously impair TDS Metrocom's ability to provide service to small and medium-sized businesses and deprive these customers of competitive choices made possible by the current requirements.

B. Cost and Timeliness

The costs to self-provision high capacity loops remain prohibitive, particularly when it is for service to small and medium-sized businesses and in areas outside the urban core. TDS Metrocom's experience in its markets belies the Petitioners' claims that building fiber costs $5.25 per foot and $30,000 per mile.[10] In the medium-sized cities in which TDS Metrocom operates it can cost $20-$30 per foot and up to $150,000 per mile to lay fiber. The Petitioners' cost estimates seem to ignore important cost factors. For example, carriers are not allowed to use the less expensive method of trenching in most urban areas. Directional boring is usually required, which raises costs significantly, as do requirements to restore the condition of streets and sidewalks, and other obligations imposed on carriers deploying fiber. Costs may be lower when constructing facilities in wide-open areas, but still not anywhere near the Petitioners' claims. The petition also ignores the cost of all of the additional equipment that must be added at both the end user and CLEC sides of the fiber over-build, as well as the right of way fees CLECs must pay.

Even for very large customers, over-building may not be economically justifiable. TDS Metrocom's experience bears this out. Out of 1356 large business customers in Metrocom's markets that initially appeared to have the potential for over-building, only 83 have so far been found to provide sufficient economic justification for facility deployment. Indeed, many of these were offices of either TDS Metrocom or its affiliate companies where revenue streams were reliable. Where other

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[9] Petition, p.11.

large customers are located, CLEC fiber facilities may not be anywhere nearby, significantly raising costs; and, as explained above, alternatives are unlikely to exist in the markets where TDS Metrocom operates. Moreover, TDS Metrocom has not found competing carriers willing to let another CLEC build a spur off of their fiber to serve a customer.

Even where over-building may be a feasible long-term strategy, CLECs are at a disadvantage in deploying new facilities to meet immediate customer needs. For example, it takes an average of approximately 45 days for TDS Metrocom to build fiber facilities to an end user once permits from local authorities have been obtained. In addition, the permitting process itself can take anywhere from 2 weeks to 90 days. Some communities cause significant delays and raise CLEC costs by regulatory hurdles, such as application fees as high as $10,000, annual right of way fees of $0.20-$0.30 per foot, and onerous "franchising requirements." Therefore, provisioning of leased facilities from the incumbent usually occurs in 3-4 weeks, while self-provisioning can easily take 3-4 months. Only with the ability to provide service using unbundled high-capacity access can the CLEC provide timely and efficient service.

III. THE CURRENT STATE OF THE MARKET FOR DEDICATED TRANSPORT DOES NOT SUPPORT THE ELIMINATION OF UNBUNDLING REQUIREMENTS FOR THAT ELEMENT

As with high capacity loops, the Petitioners arguments require the Commission to accept a new definition of ubiquity that only incorporates areas where "there is likely to be significant demand for them."[11] Additionally, the Petitioners state that for this inquiry, the Commission should only "focus on routes where dedicated transport in fact is used."[12] Artificially confining the debate within these parameters and limiting it to areas where dedicated transport revenues are high will obviously paint a picture of a more competitive market by ignoring the areas where there are the

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[10] Petition, p.14.
[11] Petition, p.3.
[12] Petition, p.18.

fewest competitive alternatives and therefore, the areas most in need of continued access to these UNEs.

Appendix B of the "Fact Report" submitted on behalf of the Petitioners attempts to portray an alternate facilities market with numerous options even in smaller MSAs. TDS Metrocom provides and excellent example of how the "Fact Report" provides incomplete information. TDS Metrocom was identified in the report as having alternative fiber networks deployed in two MSAs, Madison, WI (No.122) and Appleton-Oshkosh-Neenah, WI (No.141).[13] TDS Metrocom's deployment of fiber facilities in these markets and in others have evolved over time in an economically efficient manner in large part because of the ability to lease incumbent facilities. Even today, TDS Metrocom's fiber facilities do not reach all of the areas necessary to provide service to the entire MSA. As TDS Metrocom enters a market, many times the only fiber facilities that are initially built connect TDS Metrocom's hub switch to the incumbent's tandem switch. Leased facilities are then used to connect the hub to each collocation site to allow service throughout a larger geographic area. As traffic begins to grow on these routes, the cost of building additional fiber facilities to connect various collocation sites may be justified. Therefore, although TDS Metrocom has some fiber facilities deployed in various MSAs, it may be as limited as a single hub to tandem fiber route or as extensive as a full fiber ring. In either case, access to transport (and high capacity loop) UNEs is essential to both efficient deployment of alternative facilities as well as the on-going ability of CLECs to serve broad geographic areas outside of the urban core and in small to medium-sized cities.

IV. CONCLUSION

The Petitioners have failed to provide sufficient evidence of nationwide changes in market conditions to warrant removing current unbundled access requirements for high-capacity loops and dedicated transport that remain necessary to provide service to most of the nation beyond the large

urban cores. The ways CLECs are using high capacity UNEs now and their need to rely on them in the future to provide valuable service and hasten competitive choices to smaller markets and customers demonstrate that service, competition and choices will all be impaired if the Commission does not recognize the needs of competitive carriers, especially those serving customers outside of major metropolitan areas. Therefore, the Commission should deny the petition and continue to mandate unbundled access to high-capacity loops and dedicated transport.

Respectfully submitted,

By: /s/ Mark Jenn

Mark Jenn
Manager - Federal Affairs
TDS METROCOM, INC.
301 South Westfield Rd.
Madison, WI 53717-1799
(608) 664-4196

June 11, 2001

[13] *Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport*, Submitted by the United States Telecom Association, Prepared for BellSouth, SBC, Qwest, and Verizon, p.B9-10